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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/613,650	07/11/2000	Kenneth F. Buechler	071949-1307	9972

23620 7590 11/29/2002

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EXAMINER
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ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 11/29/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Application No.</b> 09/613,650	<b>Applicant(s)</b> BUECHLER, KENNETH F.
<b>Examiner</b> Lyle A Alexander	<b>Art Unit</b> 1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### **Status**

- 1)  Responsive to communication(s) filed on 18 September 2002.
- 2a)  This action is FINAL.                    2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

- 4)  Claim(s) 74-91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 74-80 and 82-91 is/are rejected.
- 7)  Claim(s) 81 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### **Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### **Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a)  All b)  Some \* c)  None of:  
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 74-80 and 82-86 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Renn et al.

Claim 74 as amended 9/18/02 specifies the surface may be smooth or texture. Renn et al. teach an assay device having a smooth surface with a plurality of capture zones (see column 7 line 64).

Claims 74-80,82 and 85-91 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Grenner.

See the appropriate paragraph of paper 10.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 85-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watts et al.

See the appropriate paragraph of paper 10.

***Allowable Subject Matter***

Claims 81 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The cited prior art fails to teach or anticipated the combination of a device having a plurality of discrete capture zones directed at different analytes in combination with a textured surface having one or more particles entrapped within depressions and/or between protrusion on the textured surface.

***Response to Arguments***

Applicant's arguments filed 9/10/02 have been fully considered but they are not persuasive.

Applicants amendments have obviated the 35 USC 112 issues.

Applicants stated the instant invention is directed to a plurality of different target ligand sites and the art of record does not teach this concept. The Office agrees and has vacated the rejections of claim incorporating such limitations (e.g. claims 74-84) in favor of Renn et al. who teaches a device with a plurality of capture zones.

Applicants declaration was convincing in swearing behind the 2/18/92 filing date of Sutton et al.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 1743

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9319 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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November 25, 2002